

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

RUSSELL LEON KINDLE,  
TDCJ-CID NO. 339667,  
Petitioner,

v.

RICK THALER,  
Respondent.

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S CIVIL ACTION NO. H-08-985  
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OPINION ON REMAND

Petitioner Russell Leon Kindle has filed a notice of appeal from the dismissal of his petition for writ of habeas corpus. The United States Court of Appeals determined that petitioner's final day for filing a timely notice of appeal was May 27, 2009. (Docket Entry No.23). The Court of Appeals noted that petitioner's *pro se* notice of appeal was dated May 25, 2009, but stamped as filed on June 3, 2009. Therefore, the Court of Appeals could not determine if petitioner had timely filed the notice of appeal by depositing it in the prison mail system on or before May 27, 2009. The Court of Appeals remanded the case to this Court for a determination of when petitioner placed his notice of appeal in the prison mail system. (Id.).

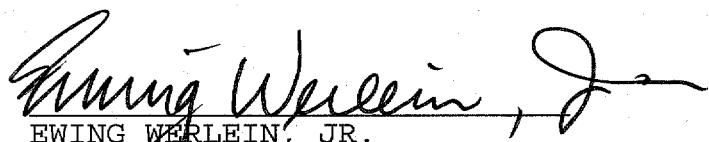
This Court ordered petitioner to submit a declaration stating when he put his notice of appeal in the prison mail system and any papers supporting such declaration. The Court also ordered the mail room supervisor of the TDCJ-CID Telford Unit to submit a certified copy of the legal mail log covering any legal papers submitted to the prison mail room by petitioner during May and

June, 2009. (Docket Entry No.24).

Petitioner has now filed an unsworn declaration, without supporting documents, declaring that he delivered the notice of appeal to prison officials on May 25, 2009, with the intent that the notice of appeal be mailed to the Clerk of this Court. (Docket Entry No.27). Certified mail room logs for May and June, 2009, submitted by Stephanie DeRamey, the Mail Room Supervisor for the TDCJ-CID Telford Unit, indicate that petitioner delivered mail addressed to the Clerk of this Court to the Telford Unit mail room on May 27, 2009. (Docket Entry No.26). From this record, the Court finds that petitioner placed his notice of appeal in the prison mail system on or before May 27, 2009.

In accordance with the Order of the Court of Appeals (Docket Entry No.23), the Clerk shall return this case to the Fifth Circuit Court of Appeals for further proceedings or dismissal, as appropriate. The Clerk shall also provide copies of this Opinion to the parties.

Signed at Houston, Texas on November 25, 2009.

  
EWIN WERLEIN, JR.  
UNITED STATES DISTRICT JUDGE